IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Criminal Writ Petition No.1238 of 2007

Prem Prakash Verma Petitioner

Vs.

M/s. Shree Ramanuj Finance Pvt.Ltd.
and ors. Respondents

Mr.Narulla with Mr.Narendra Singh i/b. Mr.Kunal Cheema for petitioner.

Mr.S.V.Marwadi for resp.no.1.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 13, 2007.

P.C.

. Heard the learned counsel for the petitioner.

In this petition filed under Article 227 of the Constitution read with Section 482 of Cr.P.C., the petitioner is praying for quashing of the proceedings in Criminal Case No.160/S/2002 presently pending before the learned Addl. Chief Metropolitan Magistrate, 43rd Court, Borivali.

. The petitioner has been impleaded as an accused in Criminal Case No.160/S/2002 for the

offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Initially the complaint was filed in the year 1999 and the process was issued. The applicant approached the trial Court and filed an application to recall the order of process. This application was presented on 17th August 1999 and it was rejected on 29/7/2003. The said order was carried in Criminal Revision Application No.640 of 2003 and the revision application was rejected on 3rd March 2004 by the learned Addl. Sessions Judge for Greater Mumbai. The petitioner then approached this Court in Criminal Writ Petition No.1346 of 2004 which was rejected by this Court on 13th September 2005 holding that in view of the law laid down by the Apex Court in the case of Adalat Prasad, the application for recall of the process was not maintainable before the trial Court. At the same time this Court observed that rejection of the petitioner would not preclude the petitioner from taking out appropriate proceedings.

. Almost two years later i.e. on 10th July 2007 this fresh petition has been filed and for the same relief as was prayed in Writ Petition No.1346 of 2004. The observation of this Court that the

rejection of Writ Petition No.1346 of 2004 would not preclude the petitioner from taking out appropriate proceedings certainly did not include re-approaching this Court on the same issue.

. Be that as it may, the grounds reagitated in this petition are on the same lines viz. there was no legally enforceable liability in discharge of which the cheques were presented and dishonoured more so because the shares which were put in possession of the complainant have been transferred and the value of the shares is over Rs.55 lakhs as compared to the liability of Rs.15 lakhs + Rs.7 lakhs with interest. Mr.Marwadi, the learned counsel for the original complainant on the other hand stated that the charge has been framed and the trial has already commenced.

. The statutory notice issued to the petitioner was replied to on 24/7/1999 by the learned Advocate for the petitioner and the only defence taken was that there was a specific understanding that the subject cheques would not be deposited for encashment. The defence that there was no legally enforceable liability was not spoken about nor was it the case of the petitioner that the loan amount was

already discharged on account of transfer of shares. The learned counsel for the petitioner referred to the letters dated 16/5/2002 and 18/5/2002 and submitted that the petitioner had no knowledge of transfer of shares.

. There is no fresh cause of action to approach this Court in the second round after Criminal Writ Petition No.1346 of 2004 was rejected on 13/9/2005 and the only development that is reported during the intervening period is that the trial has commenced. Whether the cheques were sought to be encashed against a legally enforceable liability or not is a matter which needs to be gone into by the evidence the parties may lead before the trial Court and certainly the accused will be at liberty to adduce such evidence to show (a) that the cheques were not to be encashed, (b) that the loan amount was already discharged by transfer of shares and (c) the agreement dated 13/6/1996 had built-in measures and if the cheques were dishonoured the complainant was at liberty to transfer the shares and appropriate the amount as stated in the said agreement. There is no case made out as of now to quash the proceedings pending before the learned Magistrate.

. Hence the petition is rejected. Trial of the complaint is expedited.

(B.H.MARL